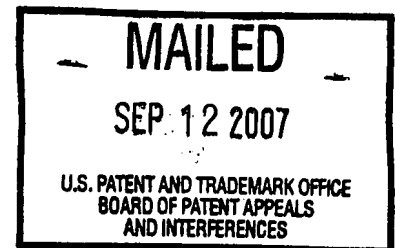


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD D. BRILL
and
RICK L. HABBEN



Application 09/855,989

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on August 30, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is identified below:

An examination of the Image File Wrapper (IFW) reveals that an Order Returning Undocketed Appeal to Examiner was mailed on December 5, 2006 which requested that appellants submit a substitute Appeal Brief which corrected the “Summary of Claimed Subject Matter” and included the “Evidence appendix” and “Related Proceedings appendix.” A compliant Appeal Brief was filed on January 12, 2007.

In response to the Examiner’s Answer mailed May 21, 2007, Appellants filed a Reply Brief on July 16, 2007.

37 CFR § 41.43 (2006) reads as follows:

§ 41.43 Examiner’s response to reply brief.

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner’s answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner’s answer responding to a reply brief may not include a new ground of rejection.

(b) If a supplemental examiner’s answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner’s answer within two months from the date of the supplemental examiner’s answer.

(c) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications. . . .

In response to the Reply Brief filed July 16, 2007, an Office communication was mailed on August 24, 2007 which acknowledged receipt and entry of the reply brief but also appeared to include rebuttal.


It should be noted that in accordance with § 41.43, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a Supplemental Examiner's Answer responding to any new issue raised in the Reply Brief. A Supplemental Examiner's Answer must be signed by a Technology Center Director or designee. A Supplemental Examiner's Answer may not include a new ground of rejection. If a Supplemental Examiner's Answer is furnished by the examiner, the appellants are permitted to file another Reply Brief under § 41.41 within two months from the date of the Supplemental Examiner's Answer.

Accordingly,

ORDERED that the application is returned to the examiner:

1. for a proper response to the Reply Brief filed July 16, 2007; and
2. for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
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PJN:psb

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